

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VINCENT PORTOMERIE,

Plaintiff,

v.

SNOHOMISH COUNTY
CORRECTIONS,

Defendant.

NO. C14-1276-RAJ-JPD

REPORT AND
RECOMMENDATION

Plaintiff is a pretrial detainee at the Snohomish County Jail. Proceeding *pro se* and *in forma pauperis*, he filed several submission in an attempt to bring both a 42 U.S.C. § 1983 civil rights complaint and a petition for writ of habeas corpus. *See* Dkts. 1 & 1-1; *see also* Dkts. 3 & 4. His allegations pertain to the medical care he is receiving in jail and his access to the jail's law library. *See id.*

In an order dated September 24, 2014, the Court construed plaintiff's submissions as a complaint, but declined to serve due to the following deficiencies: (1) plaintiff attempted to seek a writ of habeas corpus related to allegedly deficient medical care, however his allegations are related to the conditions of his confinement and therefore should be brought pursuant to § 1983; (2) plaintiff failed to allege actual injury as a result of denial of access to a law library; and (3) plaintiff named an improper defendant, the Snohomish County Jail. *See*

1 Dkt. 9. The Court granted plaintiff leave to file an amended complaint curing the noted
2 deficiencies by October 24, 2014. *Id.* at 6. The Court informed plaintiff that “any amended
3 complaint must clearly identify the defendant(s), the constitutional or federal statutory claim(s)
4 asserted, the specific facts which plaintiff believes support each claim, and the specific relief
5 requested.” *Id.* The Court further advised: “If no amended complaint is timely filed or if
6 plaintiff files an amended complaint that fails to correct the deficiencies identified above, the
7 Court may recommend that this action be dismissed under 28 U.S.C. § 1915(e)(2)(B) for
8 failure to state a claim upon which relief may be granted.” *Id.* (bold omitted).

9 On October 3, 2014, plaintiff moved for a “brief” extension of time to file his amended
10 complaint. Dkt. 10. The Court granted plaintiff’s motion and ordered that plaintiff file his
11 amended complaint on or before November 7, 2014. Dkt. 11. The Court reiterated that if
12 plaintiff failed to timely file his amended complaint, the Court may recommend dismissal
13 under § 1915(e)(2)(B) for failure to state a claim. *Id.*

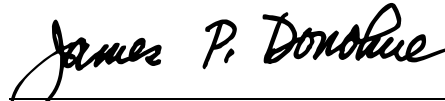
14 To date, plaintiff has not filed an amended complaint correcting the deficiencies
15 identified in the Court’s September 24, 2014 order. It thus appears that he has elected not to
16 proceed with this action. Accordingly, the Court recommends that plaintiff’s complaint and
17 this action be DISMISSED without prejudice for failure to prosecute and for failure to state a
18 claim under 28 U.S.C. § 1915(e)(2)(B). A proposed order accompanies this Report and
19 Recommendation.

20 Objections to this Report and Recommendation, if any, should be filed with the Clerk
21 and served upon all parties to this suit by no later than **December 8, 2014**. Failure to file
22 objections within the specified time may affect your right to appeal. Objections should be
23 noted for consideration on the District Judge's motion calendar for the third Friday after they
24 are filed. Responses to objections may be filed within **fourteen (14)** days after service of

1 objections. If no timely objections are filed, the matter will be ready for consideration by the
2 District Judge on **December 12, 2014**.

3 This Report and Recommendation is not an appealable order. Thus, a notice of appeal
4 seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
5 assigned District Judge acts on this Report and Recommendation.

6 DATED this 17th day of November, 2014.

7 
8 JAMES P. DONOHUE
9 United States Magistrate Judge